

ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II  
DEPUTY ATTORNEY GENERAL

February 5, 2009

Thomas S. Burack, Chairman  
New Hampshire Site Evaluation Committee  
Department of Environmental Services  
29 Hazen Drive  
Concord, New Hampshire 03301

Re: Application of Granite Reliable Power, LLC  
Site Evaluation Committee Dkt. No. 2008-04

Dear Chairman Burack:

Enclosed for filing with reference to the above-captioned matter are the following:

1. *Motion of Counsel for the Public to Suspend Deliberations and Proceedings* with attachments (Please note that Exhibit A is confidential information, and is not being distributed to the full service list); and
2. *Request of Counsel for the Public for Emergency Hearing on Motion to Suspend Deliberations and Proceedings.*

If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter C.L. Roth".

Peter C.L. Roth  
Senior Assistant Attorney General  
(603) 271-3679  
peter.roth@doj.nh.gov

cc: Attached Service List

**APPLICATION OF GRANITE RELIABLE POWER, LLC**

DOCKET NO. 2008-04

**Service List**

**Sub-Committee Members**

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Glenn Normandeau, Executive Dir. NH Fish & Game Department 11 Hazen Drive Concord, NH 03301 <a href="mailto:GLENN.NORMANDEAU@WILDLIFE.NH.GOV">GLENN.NORMANDEAU@WILDLIFE.NH.GOV</a>	Donald M. Kent, Administrator NH Natural Heritage bureau 172 Pembroke Road, Box 1856 Concord, NH 03302-1856 <a href="mailto:DONALD.M.KENT@DRED.STATE.NH.US">DONALD.M.KENT@DRED.STATE.NH.US</a>
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Jack Ruderman, Deputy Director NH Office of Energy and Planning 4 Chenell Drive Concord, NH 03301 <a href="mailto:JACK.RUDERMAN@NH.GOV">JACK.RUDERMAN@NH.GOV</a>	

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<p>George Campbell, Commissioner  NH Department of Transportation  7 Hazen Dr., Box 483  Concord, NH 03302-0483  <a href="mailto:GCAMPBELL.COMMISSIONER@DOT.STATE.NH.US">GCAMPBELL.COMMISSIONER@DOT.STATE.NH.US</a></p>	<p>Graham Morrison, Commissioner  NH Public Utilities Commission  21 South Fruit St., Suite 10  Concord, NH 03301  <a href="mailto:Graham.Morrison@puc.nh.gov">Graham.Morrison@puc.nh.gov</a></p>
<p>Clifton Below, Commissioner  NH Public Utilities Commission  21 South Fruit St., Suite 10  Concord, NH 03301  <a href="mailto:Clifton.Below@puc.nh.gov">Clifton.Below@puc.nh.gov</a></p>	

<p><b>Other State Agencies and Officials:</b></p> <p><b>Counsel to the Public:</b></p> <p>Peter C.L. Roth, Esq.  Department of Justice  33 Capitol Street  Concord, NH 03301  <a href="mailto:Peter.Roth@doj.nh.gov">Peter.Roth@doj.nh.gov</a></p>	<p>Timothy Drew, Administrator  Public information &amp; Permitting  Dept. of Environmental Services  29 Hazen Dr., Box 95  Concord, NH 03301  <a href="mailto:Timothy.Drew@des.nh.gov">Timothy.Drew@des.nh.gov</a></p>
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<p>Elizabeth H. Muzzey, Director  NH Division of Historical Resources  19 Pillsbury St., 2<sup>nd</sup> Floor  Concord, NH 03301-3570  <a href="mailto:elizabeth.muzzey@dcr.nh.gov">elizabeth.muzzey@dcr.nh.gov</a></p>	<p>Richard A. Roach  US Army Corps of Engineers  New England District  969 Virginia Road  Concord, MA 01742-2751  <a href="mailto:Richard.A.Roach@usace.army.mil">Richard.A.Roach@usace.army.mil</a></p>
<p>Louise Cote, Clerk  Millsfield (Unincorporated Place)]  25 Main Street, Box 190  Errol, NH 03579</p>	<p>Richard C. Erwin, Clerk  Dixville (Unincorporated Place)  1000 Cold Spring Road  Dixville, NH 03576</p>
<p>A Bradford Wyman, Chair  Dummer Board of Selectmen  75 Hill Road  Dummer, NH 03588</p>	<p>Patricia S. Stinson, Clerk  Town of Stratford  PO Box 366  Stratford, NH 03579  <a href="mailto:stinsonp@ncia.net">stinsonp@ncia.net</a></p>
<p>Coos County Commissioners' Office  Po Box 10  West Stewartstown, NH 03597</p>	<p><b>Counsel to NH Fish and Game</b>  Evan Mulholland, Esq  Assistant Attorney General  Environmental Protection Bureau  Department of Justice  33 Capitol Street  Concord, NH 03301  <a href="mailto:Evan.Mulholland@doj.nh.gov">Evan.Mulholland@doj.nh.gov</a></p>

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<p>Wayne R. Urso  PO Box 90  Errol, NH 03579  <a href="mailto:Wayne@TheUrsos.com">Wayne@TheUrsos.com</a></p>	

RE: Application of Granite Reliable  
Power, LLC for Certificate of site and  
facility to construct up to 99 MW of wind  
electric generation in Coos County,  
New Hampshire and operate the same

Counsel for the Public, Senior Assistant Attorney General Peter C.L. Roth (“Counsel For the Public”), by his attorneys, the Office of the Attorney General, hereby moves, pursuant to RSA 162-H:6-a, IX and 162-H:16, IV, to suspend this proceeding until such time as the Applicant, Granite Reliable Power, LLC, can make an adequate showing of financial capability. The reason for the relief sought is that the Applicant cannot demonstrate that it has “adequate financial ...capability to assure construction and operation” of its proposed facility. In support hereof, Counsel for the Public respectfully represents as follows:

1. On July 15, 2008, the Applicant submitted its application and the prefiled testimony of its witnesses, including the testimony of its chief financial officer, Christopher Lowe (the “Lowe Testimony”).
2. Pursuant to the application, the Applicant proposes to construct and operate a wind generation power plant in Coos county consisting of some thirty-seven 3-mw turbines at an estimated cost of \$275,000,000.00 (the “Project”).

3. According to the Lowe Testimony, the only testimony on file with the Committee that attempts to demonstrate financial capability, Mr. Lowe stated

Noble will arrange for the financing of the Project through various potential sources and structures to provide capital for equipment purchase and construction of the Project. The Project is currently estimated to require approximately \$275 million in capital, depending on final equipment and construction costs. As noted above, our ability to raise term capital based on the Project's revenue stream will enable GRP to raise capital to support the construction of the Project.

4. The Lowe Testimony also referenced a form S-1 securities offering registration statement it filed in May 2008, apparently to bolster its claim of financial capability. In May 2008, Noble Environmental Power made the S-1 with respect to a proposed initial public offering in the amount of \$375,000,000. Upon information and belief, the S-1 is stale and contains out of date information and has not been updated or amended since September, before the world financial markets suffered a significant and historic collapse. Upon information and belief, the Applicant will not be able to raise any financing for the Project by the S-1 and never actually intended to do so.

5. On November 3, 2008, Counsel For the Public asked a series of questions of the Applicant's chief financial officer and on November 17, 2008 received certain responses thereto including balance sheets for Granite Reliable Power, LLC and Noble Environmental Power, LLC (See Confidential Exhibit A).

6. Among the questions Counsel for the Public asked Mr. Lowe was PC 4-12: "Please describe how the Project will be financed if the initial public offering described in your testimony and the May 2008 S-1 does not go forward." The Applicant answered with a general recitation of how project finance could work for



the Project without providing any information about actual financing for the Project or identifying any documents or commitments.

7. The Applicant on December 20, 2008, offered to make Mr. Lowe available for a private telephonic conversation but he was not made available otherwise for either of the scheduled technical sessions at which the Applicant was expected to produce its witnesses for questioning. On December 26, 2008, Counsel for the Public submitted additional written questions to the Applicant for Mr. Lowe. The Applicant did not agree to answer any of those questions in writing and has not done so to date. The additional questions are attached hereto as Exhibit B (the foregoing exhibits together constitute the "Financial Information").

8. Among the questions posed by Counsel for the Public in December was a request for updated financial statements through the end of 2008. The Applicant has repeatedly said that it would not provide updated financials because such would not be available "until March."

9. The Applicant has not provided Counsel for the Public with any evidence of any kind that it now has any arrangements in place of the "various potential sources and structures" to provide the financing for the Project. The applicant has not provided Counsel for the Public with any evidence of any kind that demonstrates that it will have the financing in place for the Project before April 6, 2009.

10. The Financial Information and the only prefiled testimony of the Applicant with respect to financial capability demonstrates that the Applicant does not have adequate financial capability to construct and operate the Project. Instead,

the Financial Information shows that the Applicant has an insufficient amount of cash and that Noble Environmental Power lacks sufficient resources to pay for the construction and operation of the Project.

11. Upon information and belief, the Applicant does not have any firm arrangement to finance the Project, and will not have such arrangements in place prior to the date by which the Committee is required to make a decision to issue or deny a certificate of site and facility for the Project, if ever.

12. Pursuant to Site 301.03(h) the Applicant was required to include with its application at the time it was submitted in July 2008 detailed information of its financial capability. The Applicant was also required to submit all of its prefiled testimony with its application. Site 301.03(k).

13. The Committee can only issue a certificate if it can make a finding that the Applicant has “adequate financial....capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.” RSA 162-H:16, IV(a). It is expected that a certificate for the Project would include many important environmental and energy related terms and conditions. It would not be in the public interest or consistent with the statute to authorize the Applicant to proceed with the Project unless and until it can at least make a prima facie case that it can satisfy all of the criteria for a certificate. The application and other evidence already in the record all make clear that the Project will have significant environmental impacts that the Applicant will need to minimize, mitigate, and repair. Without a clear demonstration by the Applicant of financial capability—which should have been of record on July 15, 2008 and certainly should

be well established now— there is no way to be certain that the Project will not have an unreasonable adverse impact on the natural environment, and public health and safety. And, there is no way for the Committee to know whether the Project will have a benefit to the people of the State of New Hampshire.

Wherefore, Counsel For the Public prays that the Committee enter an order pursuant to RSA 162-H:6-a and 162-H:16, postponing the proceeding until such time as the Applicant provides the Committee definite prefiled testimony supported by documentation demonstrating that it then actually has sufficient financial capability to finance the construction and operation of the Project, which testimony and documentation should be subject to further data requests and technical sessions, and granting such other relief as may be just.

Respectfully submitted this 5<sup>th</sup> day of February, 2009,

PETER C.L. ROTH  
COUNSEL TO THE PUBLIC

By his attorneys

KELLY A. AYOTTE  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Peter C.L. Roth", written over a horizontal line.

Peter C.L. Roth  
Senior Assistant Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Tel. (603) 271-3679

**Certificate of Service**

I, Peter C.L. Roth, do hereby certify that I caused the foregoing to be served by first class mail postage prepaid upon each of the parties on the attached Service List.

Dated: February 5, 2009

  
Peter C.L. Roth

APPLICATION OF GRANITE RELIABLE POWER, LLC

DOCKET NO. 2008-04

**Service List**

**Sub-Committee Members**

Thomas Getz, Vice Chairman Site Evaluation Committee NH Public Utilities Commission 21 South Fruit St., Suite 10 Concord, NH 03301 <a href="mailto:Tom.Getz@puc.nh.gov">Tom.Getz@puc.nh.gov</a>	Robert Scott, Director Air Resources Division Dept. of Environmental Services 29 Hazen Dr., Box 95 Concord, NH 03302-0095 <a href="mailto:Robert.Scott@des.nh.gov">Robert.Scott@des.nh.gov</a>
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Jack Ruderman, Deputy Director NH Office of Energy and Planning 4 Chenell Drive Concord, NH 03301 <a href="mailto:JACK.RUDERMAN@NH.GOV">JACK.RUDERMAN@NH.GOV</a>	

## Committee Members Not on Sub-Committee

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<p>George Bald, Commissioner Dept. of Resources &amp; Economic Dev. 172 Pembroke Road, Box 1856 Concord, NH 03302-1856 <a href="mailto:george.bald@dred.state.nh.us">george.bald@dred.state.nh.us</a></p>	<p>Brook Dupee Department of Health &amp; Human Services Division of Public Health Services 29 Hazen Drive Concord, NH 03301 <a href="mailto:bdupee@dhhs.state.nh.us">bdupee@dhhs.state.nh.us</a></p>
<p>Ted Austin, Director Division of Parks &amp; Recreation Dept. of Resources &amp; Economic Dev. 172 Pembroke Road, Box 1856 Concord, NH 03302-1856 <a href="mailto:Ted.austin@dred.state.nh.us">Ted.austin@dred.state.nh.us</a></p>	<p>Brad W Simpkins, Interim Director Division of Forests &amp; Lands Dept. of Resources &amp; Economic Dev. 172 Pembroke Road, Box 1856 Concord, NH 03302-1856 <a href="mailto:brad.simpkins@dred.state.nh.us">brad.simpkins@dred.state.nh.us</a></p>
<p>George Campbell, Commissioner NH Department of Transportation 7 Hazen Dr., Box 483 Concord, NH 03302-0483 <a href="mailto:GCAMPBELL.COMMISSIONER@DOT.STATE.NH.US">GCAMPBELL.COMMISSIONER@DOT.STATE.NH.US</a></p>	<p>Graham Morrison, Commissioner NH Public Utilities Commission 21 South Fruit St., Suite 10 Concord, NH 03301 <a href="mailto:Graham.Morrison@puc.nh.gov">Graham.Morrison@puc.nh.gov</a></p>
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<p><b>Other State Agencies and Officials:</b></p> <p><b>Counsel to the Public:</b></p> <p>Peter C.L. Roth, Esq. Department of Justice 33 Capitol Street Concord, NH 03301 <a href="mailto:Peter.Roth@doj.nh.gov">Peter.Roth@doj.nh.gov</a></p>	<p>Timothy Drew, Administrator Public information &amp; Permitting Dept. of Environmental Services 29 Hazen Dr., Box 95 Concord, NH 03301 <a href="mailto:Timothy.Drew@des.nh.gov">Timothy.Drew@des.nh.gov</a></p>
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<p>Coos County Commissioners' Office Po Box 10 West Stewartstown, NH 03597</p>	<p><b>Counsel to NH Fish and Game</b> Evan Mulholland, Esq Assistant Attorney General Environmental Protection Bureau Department of Justice 33 Capitol Street Concord, NH 03301 <a href="mailto:Evan.Mulholland@doj.nh.gov">Evan.Mulholland@doj.nh.gov</a></p>

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**PUBLIC COUNSEL'S  
ATTACHMENT A  
(CONFIDENTIAL)**

**PUBLIC COUNSEL'S  
ATTACHMENT B**

**Roth, Peter**

---

**From:** Patch, Douglas L. [DPatch@orr-reno.com]  
**Sent:** Monday, December 29, 2008 8:45 AM  
**To:** Roth, Peter; deckerp@noblepower.com  
**Subject:** Re: Financial Questions

Peter, Chris Lowe is available wednesday at 10:00 AM - can we do a call then ?

----- Original Message -----

From: Roth, Peter <Peter.Roth@doj.nh.gov>  
To: Patch, Douglas L.  
Cc: Michael J. Iacopino (E-mail) <MIacopino@bclilaw.com>  
Sent: Fri Dec 26 11:42:20 2008  
Subject: Financial Questions

Doug,

Here are some of the questions I'd start with in a discussion. I'm also considering the retention of a financial consultant under 162-H:10 V.

1. In answer 4-8 to data requests, it was said that NEP "is in a registration process" for an IPO. Please provide detail about that process and its current status.
2. Why are the "blank" offering documents dated for a 2008 offering?
3. When does NEP expect to further amend the S-1 given its relative staleness and the inaccuracy of some of the factual information that many would consider to be of a critical nature? Will the May 08 S-1 be withdrawn and replaced with something else? If so, what will that be? When?
4. What was the intended purposes of the money to be raised by the IPO, give specific details and provide documents supporting those details. An answer such as "to provide working capital" will not be considered responsive.
5. Provide copies of any documents listed as part of the S-1 or amendments thereto which were not available on the edgar system, including employment contracts of senior management.
6. Please update your answer to PC 4-9, with information through the end of 2008.
7. Please provide forecasts for earnings/losses through 2009.
8. Please explain in detail the reasons that the IPO has not been finalized and issued.
9. Identify the contact person or persons at Barclays who is(are) handling the IPO. Provide contact information and authorization for me to speak with one of those people directly.
10. In response 4-11 your answer refers to GRPW. What is GRPW?
11. Identify every owner of GRPW and Granite Reliable Power and specify the interest each holds.
12. Identify the source of funds now on hand for development costs of the project.
13. State the amount of cash on hand for the project. State the amount of cash needed in the next 12 months, by quarter, for the development of the project. State the amount of income projected for the project in the next 12 months, by quarter, and the sources of such.
13. Identify any loan applications made by the Applicant and or Noble for this project (provide copies). Identify and provide copies of any term sheets or commitment letters for such loans. Provide copies of any loan documents associated with such loans.

2/2/2009

14. In response 4-12 you mention that the project will be 70-80% financed by term debt and tax equity. Please specify what the amounts of term debt and tax equity are expected to be respectively.

15. In your testimony you stated that "Noble will arrange for financing of the project thru various potential sources and structures." What specific sources and structures did you have in mind when you testified to that? What steps have you taken since then to firm up those sources and structures? Provide details. What has the result been to date?

16. How much capital for the Project does Noble or the Applicant have committed through financing as of today?

17. In your testimony you stated that the project would cost \$275 million. What is your estimate of the cost today?

18. In your response 4-12 you mentioned "other equity investors." Please identify any such "other equity investors" that have committed to making an investment and state the amount for each such committed investor.

19. Please provide a pro forma or projections showing the projected operating income and costs for the project for the next 25 years. Identify each assumption utilized and state the basis for the projections made. Provide the same information broken out by turbine string.

Thank you.

Peter

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#### STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information, including attorney-client communications and attorney work product, and are intended for the exclusive use of the addressee(s). If you are not the intended recipient, please notify the Attorney General's office immediately at (603) 271-3679 or reply to my e-mail address above, and destroy all copies of this electronic message and any attachments.

RE: Application of Granite Reliable  
Power, LLC for Certificate of site and  
facility to construct up to 99 MW of wind  
electric generation in Coos County,  
New Hampshire and operate the same

Counsel for the Public, Senior Assistant Attorney General Peter C.L. Roth (“Counsel For the Public”), by his attorneys, the Office of the Attorney General, moved the Committee pursuant to RSA 162-H:6-a, IX and 162-H:16, IV, to suspend this proceeding until such time as the Applicant, Granite Reliable Power, LLC, can make an adequate showing of financial capability. Counsel for the Public hereby requests an immediate hearing on his motion.

An immediate hearing is necessary because the parties and the Applicant are preparing for a hearing on the merits to begin on March 9, 2009. Where the Application and other materials in the record do not make a prima facie case that the Applicant can meet its burden to show financial capability it would be an unnecessary exercise to have the parties prepare witnesses and documents at great expense for the other issues. It would also be an unnecessary burden for Committee members who may be required to travel and will take time from their positions during a very crucial time of year in a particularly difficult budget year. An immediate hearing will resolve now, whether the hearing should go forward on March 9<sup>th</sup>.

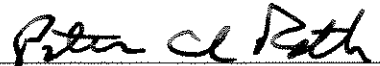
Wherefore, Counsel For the Public prays that the Chairman of the Committee exercise his authority to schedule an immediate hearing on Counsel for the Public's motion, and grant such other relief as may be just.

Respectfully submitted this 5<sup>th</sup> day of February, 2009,

PETER C.L. ROTH  
COUNSEL TO THE PUBLIC

By his attorneys

KELLY A. AYOTTE  
ATTORNEY GENERAL



Peter C.L. Roth  
Senior Assistant Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
Tel. (603) 271-3679

**Certificate of Service**

I, Peter C.L. Roth, do hereby certify that I caused the foregoing to be served by first class mail postage prepaid upon each of the parties on the attached Service List.

Dated: February 5, 2009

  
Peter C.L. Roth

APPLICATION OF GRANITE RELIABLE POWER, LLC

DOCKET NO. 2008-04

**Service List**

**Sub-Committee Members**

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<p>A Bradford Wyman, Chair  Dummer Board of Selectmen  75 Hill Road  Dummer, NH 03588</p>	<p>Patricia S. Stinson, Clerk  Town of Stratford  PO Box 366  Stratford, NH 03579  <a href="mailto:stinsonp@ncia.net">stinsonp@ncia.net</a></p>
<p>Coos County Commissioners' Office  Po Box 10  West Stewartstown, NH 03597</p>	<p><b>Counsel to NH Fish and Game</b>  Evan Mulholland, Esq  Assistant Attorney General  Environmental Protection Bureau  Department of Justice  33 Capitol Street  Concord, NH 03301  <a href="mailto:Evan.Mulholland@doj.nh.gov">Evan.Mulholland@doj.nh.gov</a></p>

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